

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

**Norfolk Southern Railway Company**  
Three Commercial Place  
Norfolk, Virginia 23510

Respondent

Proceeding to Assess Class I  
Administrative Penalty Under  
**Section 309(g) of the Clean Water Act**

**Docket No. CWA-03-2015-0078**

**CONSENT AGREEMENT  
AND FINAL ORDER**

REGIONAL HEARINGS OFFICE  
EPA REGION III PHILADELPHIA, PA

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**CONSENT AGREEMENT AND FINAL ORDER**

**I. STATUTORY AND REGULATORY AUTHORITY**

1. This Consent Agreement is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III (“EPA” or “Complainant”) and Norfolk Southern Railway Company (“NSRC” or “Respondent”) pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* (“*Consolidated Rules*”), 40 C.F.R. Part 22. The parties having agreed to settlement of alleged violations of the Clean Water Act by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) & (3).
2. Respondent is a Class 1 freight railroad transportation company, and is the owner or operator of rail yards and other transportation facilities in, among other states, Pennsylvania, Virginia, and West Virginia including the Rutherford Intermodal Yard, located in Swatara Township, Dauphin County, PA; Portlock Yard, located in Chesapeake, VA; Weller Yard, located in Buchanan County, VA; and Williamson Yard, located in Williamson, WV. The Rutherford Intermodal Yard, Portlock Yard, Weller Yard, and Williamson Yard are referred to herein individually as a “Facility” and are referred to herein collectively as “Facilities.”
3. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (“NPDES”) program.

4. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), as amended by the Debt Collection Improvement Act of 1996 (codified at 28 U.S.C. § 2461) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the Administrator of the EPA is authorized after March 15, 2004, to assess administrative penalties against any person who has violated a condition or limitation in an NPDES permit issued pursuant to Section 402 of the CWA in an amount not to exceed \$16,000 per day for each violation, up to a total penalty amount of \$37,500, for violations that occurred between January 12, 2009 and December 6, 2013.
5. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Pennsylvania Department of Environment Protection (“PADEP”), the Virginia Department of Environmental Quality (“VADEQ”), and the West Virginia Department of Environmental Protection (“WVDEP”) are authorized to issue NPDES permits within Pennsylvania, Virginia, and West Virginia respectively, including NPDES permits for stormwater discharges associated with industrial activities.
6. PADEP has issued NPDES Permit No. PA0246620 for the Rutherford Intermodal Yard, VADEQ has issued General NPDES Permit VAR050332 for the Portlock Yard and NPDES Permit No. VAR00052639 for the Weller Yard, and WVDEP has issued NPDES Permit No. WV0001244 for the Williamson Yard (collectively the “NPDES Permits”).
7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), generally prohibits the discharge of any pollutant from any point source by a person into a water of the United States except in compliance with a permit issued under the NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
8. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.”
9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” and the term “discharge of pollutants” as “any addition of any pollutant to navigable waters from any point source,” or “any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.”
10. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” in relevant part as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

11. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” in relevant part as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”
12. Section 502(7) of the CWA, 33 U.S.C. §1362(7), defines the term “navigable waters” as “the waters of the United States, including the territorial seas.” *See also* 40 C.F.R. § 122.2 (defining “Waters of the United States”).
13. 40 C.F.R. § 122.26(b)(14) defines “storm water discharge associated with industrial activity” in part as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant” of the types and subject to the limitations described elsewhere in the definition.
14. An NPDES permit is required for stormwater discharges associated with industrial activities, including stormwater discharges from transportation facilities to the extent that such facilities have vehicle maintenance shops, equipment cleaning operations or airport deicing operations and the stormwater discharges are from such shops or operations. *See* 33 U.S.C. § 1342; 40 C.F.R. § 122.26(b)(14)(viii).

## **II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW**

15. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
16. Stormwater from the Rutherford Intermodal Yard drains into an unnamed tributary to Spring Creek. Spring Creek drains into the Susquehanna River. Spring Creek and the Susquehanna River are considered “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.
17. Stormwater from the Portlock Yard drains into the South Branch of the Elizabeth River, which meets the definition of a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.
18. Stormwater from the Weller Yard drains into the Levisa Fork River, which meets the definition of a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

19. Stormwater from the Williamson Yard drains into the Tug Fork River, which meets the definition of a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.
20. Pursuant to the terms of its NPDES Permits, Respondent is authorized to discharge pollutants through point sources from the regulated portions of the Facilities into navigable waters.

**Count I**

**Failure to Maintain Comprehensive Site Compliance Evaluation Reports - Rutherford Intermodal Yard**

21. Respondent owns and/or operates the Rutherford Intermodal Yard with a mailing address of 5050 Paxton Street, Harrisburg, PA 17111.
22. On January 4, 2011, EPA and PADEP conducted an inspection to evaluate the wastewater and stormwater monitoring practices of the Rutherford Intermodal Yard.
23. At the time of the inspection, the Rutherford Intermodal Yard was operating under NPDES Permit No. PA0246620, issued by PADEP effective as of January 1, 2008 (the “Rutherford Permit”).
24. Part C.II.D.3 of the Rutherford Permit required Respondent to perform a comprehensive site compliance evaluation inspection of the Rutherford Intermodal Yard at least once per year.
25. Part C.II.D.3.c of the Rutherford Permit required Respondent to complete a report summarizing the scope of the comprehensive site compliance evaluation inspection, which was to be made available upon request and retained for at least one year after coverage under the Rutherford Permit terminated.
26. At the time of the inspection, as well as in response to a request for information that EPA issued to Respondent pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), dated November 8, 2012, relating to all NPDES-permitted facilities owned or operated by Respondent in EPA Region 3 over a five year period (the “Section 308 Information Request”), Respondent was unable to produce reports summarizing the scope of the comprehensive site compliance evaluation inspections performed at the Rutherford Intermodal Yard in 2009 and 2010.
27. By failing to maintain reports summarizing the scope of the comprehensive site compliance evaluation inspections performed at the Rutherford Intermodal Yard in 2009 and 2010, Respondent violated the terms of the Rutherford Permit.

## **Count II**

### **Failure to Maintain Monthly Visual Inspection Forms - Rutherford Intermodal Yard**

28. Part C.II.D.1 of the Rutherford Permit required Respondent to develop a Preparedness, Prevention, and Contingency (“PPC”) Plan for the Rutherford Intermodal Yard, which, among other things, was to identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the Facility.
29. Part F.4. of Respondent’s PPC Plan for the Rutherford Intermodal Yard requires Respondent to conduct routine monthly visual inspections of the Facility to discover conditions that could affect stormwater quality. Part F.4. of Respondent’s PPC Plan for the Rutherford Intermodal Yard also provides that inspection forms that document the monthly visual inspections must be maintained for a minimum of six years.
30. In response to EPA’s Section 308 Information Request, Respondent was unable to produce monthly visual inspection forms to document inspections performed between December 2007 and December 2012.
31. By failing to maintain monthly visual inspection forms for inspections performed between December 2007 and December 2012, Respondent violated the terms of the PPC Plan prepared pursuant to the Rutherford Permit.

## **Count III**

### **Effluent Violation – Rutherford Intermodal Yard**

32. The Rutherford Permit described the effluent limits applicable to discharges of stormwater from the regulated portions of the Rutherford Intermodal Yard pursuant to the Rutherford Permit.
33. As disclosed in Respondent’s response to EPA’s Section 308 Information Request, on September 29, 2011, the stormwater discharge from the Rutherford Intermodal Yard exceeded the effluent limit for pH in violation of the Rutherford Permit.

## **Count IV**

### **Effluent Violation – Portlock Yard**

34. Respondent owns and/or operates the Portlock Yard with a mailing address of 1710 Atlantic Avenue, Chesapeake, VA 23324.
35. On September 22, 2009, VADEQ authorized Respondent to discharge stormwater from the Portlock Yard pursuant to General NPDES Permit VAR050332, with an expiration date of June 30, 2014 (the “Portlock Permit”).

36. The Portlock Permit described the effluent limits applicable to discharges of stormwater from the regulated portions of the Portlock Yard.
37. As disclosed in Respondent's response to EPA's Section 308 Information Request, on November 29, 2011, the stormwater discharge from the Portlock Yard exceeded the effluent limit for total suspended solids in violation of the Portlock Permit.

**Count V**  
**Effluent Violation – Weller Yard**

38. Respondent owns and/or operates the Weller Yard on Route 460 near Harmon Junction in Buchanan County, VA.
39. On March 19, 2007, VADEQ issued NPDES Permit No. VA0052639 (effective as of March 25, 2007) for discharges of stormwater and treated groundwater from the Weller Yard (the "Weller Permit").
40. The Weller Permit described the effluent limits applicable to discharges from the regulated portions of the Weller Yard.
41. As disclosed in Respondent's response to EPA's Section 308 Information Request, on December 6, 2011, the discharge exceeded the effluent limit for acute whole effluent toxicity in violation of the Weller Permit.

**Count VI**  
**Effluent Violation – Williamson Yard**

42. Respondent owns and/or operates the Williamson Yard with a mailing address of 98 Norfolk Southern Drive, Williamson, WV 25661.
43. On April 25, 2008, WVDEP issued NPDES Permit No. WV0001244, effective May 25, 2008, for discharges of stormwater at the Williamson Yard (the "Williamson Permit").
44. The Williamson Permit described the effluent limits applicable to discharges of stormwater from the regulated portions of the Williamson Yard.
45. As disclosed in Respondent's response to EPA's Section 308 Information Request, on July 9, 2012, the stormwater discharge from the Williamson Yard exceeded the effluent limit for total suspended solids in violation of the Williamson Permit.

### **III. GENERAL PROVISIONS**

46. In order to resolve the alleged violations described above, and to provide a legal framework for the payment of a civil penalty, EPA and Respondent are entering into this CAFO. Respondent consents to issuance of this CAFO and agrees to undertake all actions required by its terms and conditions. Respondent consents to the assessment of the civil penalty as set forth herein at Paragraph 57, below.
47. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO, and waives any defenses it might have as to jurisdiction and venue. Respondent agrees not to contest EPA's jurisdiction to issue this CAFO and not to contest EPA's jurisdiction to enforce the terms of this CAFO.
48. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 47, above.
49. EPA and Respondent expressly acknowledge that Paragraph 47, above, shall not constitute an admission as to any matter other than necessary for establishing EPA's jurisdiction in this proceeding, and is neither intended nor shall be construed as an admission that may be relied upon for any purpose by any person not a party to this proceeding.
50. Respondent hereby expressly waives its right to a hearing, pursuant to Section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A), on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication, and waives its right to appeal this final order pursuant to Section 309(g)(8)(A), 33 U.S.C. § 1319(g)(8)(A).
51. This CAFO settles all claims for the alleged violations identified in this CAFO.
52. Each party to this action shall pay its own costs and attorney fees.
53. The provisions of this CAFO shall be binding upon EPA, Respondent, and Respondent's officers, principals, directors, successors and assigns.
54. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
55. By executing this CAFO, Respondent asserts that it is in material compliance with its NPDES permits at the Facilities.
56. Pursuant to Section 309(g)(4) of the Act, 33 U.S.C. § 1319 (g)(4), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the CAFO before issuing the Final Order. In addition, EPA has consulted with the states of Pennsylvania, Virginia,

and West Virginia regarding this action, and will mail a copy of this document to the appropriate state officials.

#### IV. CIVIL PENALTY

57. In full and final settlement and resolution of all allegations contained in the foregoing Findings of Fact, Jurisdictional Allegations, and Conclusions of Law, and in full and final satisfaction of all claims for civil penalties pursuant thereto, Respondent agrees to pay a civil penalty of **twenty five thousand dollars (\$25,000)** for the violations cited herein. This civil penalty does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
58. EPA has assessed the civil penalty in Paragraph 57, above, pursuant to its authority under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A). EPA has determined the civil penalty amount in Paragraph 57, above, after having taken into account the factors listed in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), including but not limited to the nature, circumstances, extent and gravity of the violations, and, with respect to the Respondent, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.
59. Respondent shall pay the civil penalty set forth in Paragraph 57, above, within thirty (30) days after the effective date of this CAFO. The civil penalty payment shall be made in accordance with the following requirements:

(a) The payment shall reference Respondent's name, address and docket number, be made in U.S. dollars by money order, corporate check, cashier's check or certified check made payable to the "Treasurer, United States of America", wire transfer, ACH, or on line, and delivered as follows:

(i) If by money order, corporate check, cashier's check or certified check sent by U.S. postal service mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197 9000

Contact: Bryson Lehman 513-487-2123

(ii) If by money order, corporate check, cashier's check or certified check sent by private commercial overnight delivery service:



U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL MO C2 GL  
St. Louis, MO 63101

Contact: 314-418-1028

(iii) All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268 0001

(iv) If by electronic wire transfer:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

(v) If by ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301 887 6548 or REX, 1 866 234 5681

(vi) On Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

(vii) Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

(b) A copy of the check or money order or other proof of payment submitted in fulfillment of the penalty payment requirements of this CAFO shall be sent to the following:

U.S. Environmental Protection Agency  
Regional Hearing Clerk (3RC00)  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

and

Mark Bolender (3RC20)  
Senior Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

(c) A transmittal message identifying the case name and docket number identified above shall accompany the remittance and copies of the check or transfer instrument.

60. Failure by Respondent to pay the civil penalty assessed by this CAFO within thirty (30) days after the CAFO's effective date may subject Respondent to a collection action under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount and appropriateness of the civil penalty are not subject to review in a collection proceeding. *See* 15 U.S.C. § 2615(a)(4)(A).

61. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest on unpaid penalties, and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil penalty if it is not paid within fifteen days after the date due. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 40 C.F.R. § 13.11. In addition, a quarterly nonpayment penalty charge may be assessed on any delinquent debt pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In addition, EPA will assess a \$15.00 administrative handling charge for administrative costs incurred during the first

30-day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains due.

62. The penalty set forth in Paragraph 57, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

#### **V. APPLICABLE LAWS**

63. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA.

#### **VI. RESERVATION OF RIGHTS**

64. This CAFO resolves only the civil claims for the specific violations of the CWA alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent fully reserves its rights to contest, challenge and/or defend against any subsequent action(s) taken by EPA against or involving Respondent.
65. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA as set forth in the CAFO. EPA reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this CAFO. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event. Respondent fully reserves its rights to contest, challenge and/or defend against any such action(s) taken by EPA against or involving Respondent.

#### **VII. FULL AND FINAL SATISFACTION**

66. EPA hereby agrees and acknowledges that payment of the civil penalty shall be in full and final satisfaction of all civil claims for penalties which Complainant may have under Section 309(g) of the CWA for the violations alleged in this CAFO.

**VIII. PARTIES BOUND**

67. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.


**IX. EFFECTIVE DATE**

68. This CAFO will be issued after a forty (40) day comment period, execution by an authorized representative of the EPA and filing with the regional hearing clerk. It will become final and effective thirty (30) days after issuance. Payment of the civil penalty assessed in this CAFO is due thirty (30) days after the effective date, unless a petition to set aside the CAFO is filed pursuant to 40 C.F.R. § 22.45(c)(4).

**X. ENTIRE AGREEMENT**

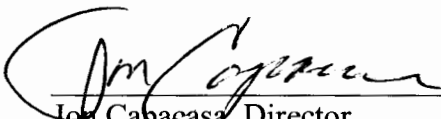
69. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

FOR RESPONDENT, Norfolk Southern Railway Company:

By:   
Name: Helen M. Hart  
Title: General Solicitor, Norfolk Southern Corporation

SO ORDERED, pursuant to 33 U.S.C. § 1319(g) and 40 C.F.R. Part 22,

this 6<sup>th</sup> day of July, 2015.

  
Jon Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection Agency, Region III